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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT ANTHONY MCLUSKER,

Defendant and Appellant.

D074396

(Super. Ct. No. MH114742)

APPEAL from an order of the Superior Court of San Diego County, Margie G. Woods, Judge. Affirmed.

Kristen Owen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This is an appeal from an order of the San Diego County Superior Court which denied a petition filed by Robert Anthony McLusker to restore his ability to possess firearms under Welfare and Institutions Code,¹ section 8103, subdivision (f).

In February 2018, McLusker was involuntarily committed for mental health review pursuant to section 5150. Following his release from the hospital, McLusker's firearms were seized, and he was prohibited from possessing any firearm. Following an evidentiary hearing, the trial court found by a preponderance of the evidence that McLusker could not possess or use a firearm in a safe and lawful manner. The court denied McLusker's petition for relief from the firearm restriction.

McLusker filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) indicating she has not been able to identify any arguable issue for reversal on appeal. Counsel requests this court to review the record for error as mandated by *Wende*. We offered McLusker the opportunity to file his own brief on appeal, but he has not responded.

STATEMENT OF FACTS

The trial court conducted an evidentiary hearing on McLusker's petition. McLusker made a statement under oath and was cross examined by the prosecution. The court also reviewed McLusker's medical records from his commitment and treatment.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

After a stressful day, McLusker contacted a friend who was a police officer. McLusker's statements caused the officer to believe McLusker was suicidal. The friend offered to meet with him.²

When McLusker met with his friend, other police officers were present, and he was taken into custody for a section 5150 examination. The officers seized McLusker's gun and ammunition from his car. McLusker was then taken to Balboa Naval Hospital for involuntary commitment. He was agitated and eventually medicated by hospital staff.

McLusker was released several days later having been diagnosed with depression and chronic pain.

McLusker testified that after his release he completed an eight-hour outpatient treatment program but was not given any documentation of such treatment.

The medical records showed that prior to this incident McLusker's wife had reported to police that he had been waving a gun at her. McLusker denied waving a gun and claimed he was getting ready for work, putting his gun in the holster and was arguing with his wife. He acknowledged waving his arms around, presumably holding the gun, but denied pointing a gun at his wife. The medical records also showed McLusker was evaluated as suicidal when admitted to the hospital and that he had not been taking his medication. At a previous time, McLusker had placed a gun in his mouth and pulled the trigger, but the gun was not loaded.

DISCUSSION

² McLusker was discharged from the Marines shortly before this incident. At the time he was working two jobs as an armed, private security guard.

As we have noted, appellate counsel has filed a brief pursuant to *Wende* requesting this court to review the record for error. In order to assist the court, and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel has identified one possible, but not arguable issue: whether the evidence is sufficient to support the trial court's findings.

We have reviewed the entire record and have not identified any arguable issues for reversal on appeal. Competent counsel has represented McLusker on this appeal.

DISPOSITION

The order denying relief under section 8103 is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

DATO, J.